Worth knowing about:

Transfer pricing

TAX LEGAL
February 2025

Tax rules require that affiliated companies deal with each other on the same terms that apply to independent parties. This is called the arm's length principle. Compliance with the requirement therefore presupposes that internal rules for settlement etc. - transfer pricing - are established between the companies.

As in many other countries, Denmark has rules that require companies to provide information to the tax authorities about intra-group transactions. In many cases, written documentation must also be prepared and submitted to prove that such transactions are at arm's length.

Which transactions are covered?

The rules apply to transactions between group companies, including branches, as well as transactions between the company and the main shareholder. Thus, there must be a controlling influence. This means that transactions between companies etc. where someone (natural or legal persons) holds more than 50% of the capital or more than 50% of the votes, or where there is joint management are controlled transactions.

A company that owns more than 50% of the shares in another company exercises controlling influence over that company, even if it only holds 40% of the voting rights.

Shareholdings of natural persons are also included. If a person owns the majority in two different companies, these are affiliated and transactions between the companies are thus controlled transactions.

It is therefore important to note that the group definition in this area is not the same as in the joint taxation area, where only votes determine whether companies are affiliated and where the ownership interests of natural persons are not included.

> If a natural person owns all the shares in two different companies, these are the affiliates.

The disclosure obligation

Affiliated companies - including those covered by the exemption clause - are obliged to provide the tax authorities with information about the group relationship. This applies regardless of whether they trade - or have other transactions - with each other or not.

If there are transactions between the companies, they must also provide summary information about the nature and size of the transactions in the information form.

The documentation obligation

Companies that are not covered by the exemption clause must prepare and submit written documentation on how prices and terms are determined in transactions between group companies, branches and principal shareholders.

As of income years starting 1 January 2021, the documentation must be submitted to the tax authorities no later than 60 days after the deadline for submitting the tax return (the tax return deadline).

Companies should establish controls to ensure that transactions are carried out as described in the TP documentation.

Furthermore, procedures must be implemented to ensure that the procedures are continuously updated and adjusted as changes occur in the organisation. Thus, the documentation must always fulfil the requirements set by the tax authorities.

Auditor’s statement

Under special conditions, the Danish Tax Agency may require a company to obtain an auditor's statement on the company's TP documentation.

Country-by-country report

Groups with a consolidated turnover exceeding DKK 5.6 billion are obliged to submit a so-called country-by-country report. In addition, the Danish Tax Agency must be notified of which company must submit the report before the end of the income year to which the report relates.

Important exceptions

Smaller groups (SME exemption)

The special requirements for preparing and submitting written documentation for intra-group transactions do not apply to smaller companies. That is, companies that alone or with group companies have fewer than 250 employees and either a consolidated balance sheet below DKK 125 million or a consolidated turnover below DKK 250 million.

The assessment of whether the limits have been exceeded is calculated at group level, where foreign companies are also included. A small Danish company may therefore be covered by the rules if it is owned by a large international group. When assessing whether a group exists in relation to the documentation requirement, closely related natural persons are considered as one person.

However, intra-group transactions with companies etc. outside the EU/EEA or in non-agreement countries must always be documented in writing regardless of the size of the group.

Even though smaller groups are not required to prepare documentation, they are still obliged to deal with each other at arm's length.

Only cross-border controlled transactions covered

Purely Danish controlled transactions are not covered by the TP documentation obligation unless the parties are taxed under different sets of rules.

Fines and penalties

The Danish Tax Agency can impose fines on companies that do not prepare TP docu-mentation, do not submit the documentation on time or where the documentation is inadequate. The fine is a fixed basic amount of DKK 250,000 per year but can be reduced by half if adequate documentation is subsequently submitted. Conversely, the fine is increased by 10% of any income increase implemented by the Danish Tax Agency.

If TP documentation has not been prepared or is deemed significantly inadequate, a discretionary assessment can be made.

Companies are also penalised with fines according to special rules for providing false information about the fulfilment of the conditions for limited documentation requirements.

Do you have any questions? Contact:

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